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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [REDACTED]
EAC 98 011 51235

Office: Vermont Service Center

Date: MAY 01 2002

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(A)(iii)

IN BEHALF OF PETITIONER:

[REDACTED]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Helen E. Crawford Jr.
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be dismissed, and the order of the Associate Commissioner will be affirmed.

The petitioner is a native and citizen of Vietnam who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director denied the petition after determining that the record did not contain satisfactory evidence to demonstrate that the petitioner: (1) has resided in the United States with her U.S. citizen spouse pursuant to 8 C.F.R. 204.2(c)(1)(i)(D); and (2) is a person whose deportation (removal) would result in extreme hardship to herself, or to her child pursuant to 8 C.F.R. 204.2(c)(1)(i)(G).

Upon review of the record of proceeding, the Associate Commissioner concurred with the director's conclusion and denied the petition on May 8, 2000.

On motion, the petitioner states that she had explained in detail her story, with the help of her attorney, and that she does not have any more evidence to submit but her own suffering. The petitioner added that she is now married to a naturalized U.S. citizen whom she loved and lived with since their marriage in July 1999.

Pursuant to 8 C.F.R. 103.5(a)(2), a motion to reopen must state the new facts to be proved at the reopened proceedings and be supported by affidavits or other documentary evidence. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. 103.5(a)(4). In this case, neither counsel nor the petitioner stated or presented new facts or other documentary evidence in support of the motion to reopen.

Furthermore, based on the petitioner's remarriage, she is ineligible for the benefit sought pursuant to 8 C.F.R. 204.2(c)(1)(ii).

Accordingly, the motion will be dismissed.

ORDER: The decision of the Associate Commissioner dated May 8, 2000, is affirmed.